

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JAMES HOLMAN BROWNING, JR.,)	
)	
Petitioner,)	
)	1:06CV24
v.)	1:03CR36-2
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

O-R-D-E-R

On August 10, 2006, in accordance with 28 U.S.C. § 636(b), the Recommendation of the United States Magistrate Judge was filed and notice was served on the parties in this action and a copy was given to the court.

Within the time limitation set forth in the statute, Petitioner objected to the Recommendation.¹

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo

¹ The court notes that counsel has filed two documents styled Motion to Reconsider the Recommendation and Order of the United States Magistrate Judge (docket nos. 15 & 16). The court treats these filings as objections to the Recommendation. In addition, the court notes that Petitioner, *in propria persona*, has filed two documents since the Recommendation was entered (docket nos. 17 & 18). The court will not address these latter two filings because Petitioner is represented by counsel, and he has no right to this kind of "hybrid representation." See *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (noting there is no constitutional right to a "hybrid representation" in which defendant is represented both by himself and by counsel); *Cain v. Peters*, 972 F.2d 748, 750 (7th Cir. 1992) (representation by counsel and self-representation are mutually exclusive entitlements in light of *McKaskle*).

determination which is in accord with the Magistrate Judge's report. The court hereby adopts the Magistrate Judge's Recommendation.

IT IS HEREBY ORDERED that Petitioner's motion to vacate, set aside or correct sentence (docket no. 1) be **DENIED** and that this action be dismissed with prejudice. A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.


UNITED STATES DISTRICT JUDGE

DATE: November 3, 2006